AMER MOHIDEEN DAWOOD

v.

SNEH BHAR W/O TER BINDER SINGH

COURT OF APPEAL, KUALA LUMPUR
DATO' N. H. CHAN JCA
DATO' K. C. VOHRAH J
DATUK WIRA HJ. MOHD. NOOR AHMAD J
[CIVIL APPEAL NO: P-02-284-95]
6 APRIL 1996

CIVIL PROCEDURE: *Appeal - Appeal to Court of Appeal - Whether incompetent for want of leave - Amount of claim and value of subject matter of appeal - Determination of - Whether value of subject matter less than RM250,000 - Courts of Judicature Act 1964 s. 68(1)(a).*

WORDS AND PHRASES: *"The amount of the claim" - "The value of the subject-matter of the claim" - Section 68(1)(a) Courts of Judicature Act 1964.*

By a contract in writing dated 14 September 1989, the respondent bought from the appellant a piece of land for RM99,000. Following that, on 7 April 1995, the High Court, Penang, ordered specific performance of the contract. The appellant appealed against the said order of the High Court but omitted to apply for leave. Apparently, in his pleading, the appellant claimed for a sum in excess of RM250,000. The respondent nonetheless applied for the appeal to be dismissed under s. 68(1)(a) Courts of Judicature Act 1968 on the ground that the value of the subject matter under appeal was less than RM 250,000. Before the learned appeal Judges, a question arose as to whether the value of the subject matter of the claim herein was only RM 99,000, such as to render the appeal incompetent for want of leave.

Held:

Per N. H. Chan JCA (delivering the judgment fo the Court):

[1] "The amount of the claim" in s. 68(1)(a) has to mean the total amount or sum of the claim in the action which has been adjudged to be payable and, if it is not a money claim, it is "the value of the subject-matter of the claim" in the action which has been adjudged as recoverable, because it is only against the judgment (and not against the claim made by claimants in their pleadings) that the appeal could be brought.

[2] If "the amount of the claim" or "the value of the subject-matter of the claim" is to be based on the claim as pleaded in the statement of claim and not on the judgment, then the purpose of s. 68(1)(a) could be circumvented quite easily by the claimants merely stating in their pleadings, in every case, that they are claiming for more than RM250,000.

[3] In the instant case, the appellant was specifically ordered to perform the sale and purchase agreement. In the event, without leave, an appeal against that judgment will be prohibited if the value of the subject-matter of that judgment for specific performance is below RM250,000.

[4] The facts showed that the value of the contract on which specific performance was sought and for which specific performance has been decreed is RM99,000 which was the purchase price. Since the value of the subject-matter of the order for specific performance is the price paid for the said land, namely, RM99,000, the appeal is therefore incompetent as no leave was obtained from the Court of Appeal.

[Motion to dismiss appeal allowed]

***[Bahasa Malaysia** Translation of Headnotes]*

***PROSEDUR SIVIL:** Rayuan - Rayuan kepada Mahkamah Rayuan - Samada tak kompetan kerana ketiadaan kebenaran - Jumlah tuntutan dan nilai hal-perkara rayuan - Penentuan - Samada nilai hal-perkara kurang daripada RM250,000 - Akta Mahkamah Kehakiman 1964 s. 68(1)(a).*

***PERKATAAN & ISTILAH:** "Jumlah tuntutan" - "Nilai hal-perkara tuntutan" - Seksyen 68(1)(a) Akta Mahkamah Kehakiman 1964.*

Melalui satu kontrak bertulis bertarikh 14 September 1989, responden telah membeli daripada perayu sebidang tanah dengan nilai sebanyak RM99,000. Berikutan itu pada 7 April 1995, Mahkamah Tinggi, Pulau Pinang telah memerintahkan pelaksanaan spesifik ke atas kontrak tersebut. Perayu telah merayu terhadap perintah Mahkamah Tinggi tersebut tetapi telah terlupa untuk mendapatkan kebenaran. Dalam plidingnya, perayu telah menuntut untuk mendapatkan jumlah yang melebihi RM250,000. Responden namun begitu telah memohon supaya rayuan tersebut ditolak di bawah s. 68(1)(a) Akta Mahkamah Kehakiman 1968 atas alasan bahawa nilai hal-perkara di bawah rayuan tersebut adalah kurang daripada RM250,000. Dihadapan Hakim rayuan yang bijaksana, satu persoalan telah berbangkit samada nilai hal-perkara bagi tuntutan di sini adalah hanya sebanyak RM99,000, sehingga boleh menjadikan rayuan tersebut tak kompetan kerana ketiadaan kebenaran.

Diputuskan:

Oleh N.H. Chan HMR (menyampaikan penghakiman Mahkamah):

[1] "The amount of the claim" dalam s. 68(1)(a) haruslah bermaksud jumlah penuh atau jumlah tuntutan dalam tindakan tersebut yang mana telah dihakimkan kena di bayar dan jika ianya tidak merupakan tuntutan wang, ianya adalah "the value of the subject-matter of the claim", dalam tindakan yang telah dihakimkan sebagai boleh didapatkan semula, kerana ianya hanya

terhadap penghakiman (dan bukannya terhadap tuntutan yang dibuat oleh pihak penuntut dalam pliding-pliding mereka) bahawa rayuan tersebut boleh dimulakan.

[2] Jika "the amount of the claim" atau "the value of the subject-matter of the claim" hendaklah diasaskan kepada tuntutan sepertimana yang diplidkan dalam pernyataan tuntutan dan bukannya pada penghakiman, maka tujuan s. 68(1)(a) boleh dipintas dengan mudahnya oleh pihak-pihak menuntut semata-mata dengan menyatakan di dalam pliding-pliding mereka, dalam setiap kes, bahawa mereka sedang menuntut untuk mendapatkan lebih daripada RM250,000.

[3] Dalam kes semasa, perayu secara khususnya diperintah untuk melaksanakan perjanjian jualbeli tersebut. Oleh hal yang demikian, tanpa kebenaran, satu rayuan terhadap penghakiman tersebut adalah dilarang jika nilai hal-perkara penghakiman untuk pelaksanaan spesifik adalah kurang daripada RM250,000.

[4] Fakta-fakta menunjukkan bahawa nilai kontrak ke atas mana pelaksanaan spesifik ingin diperolehi dan bagi yang mana pelaksanaan spesifik telahpun didekrikan adalah sebanyak RM99,000 yang mana adalah harga belian. Oleh kerana nilai hal-perkara bagi perintah untuk pelaksanaan spesifik adalah harga yang telah dibayar bagi tanah tersebut, iaitu, sebanyak RM99,000, rayuan disini dengan itu adalah tak kompetan kerana tiada kebenaran diperolehi daripada Mahkamah Rayuan.

[Usul untuk menolak rayuan dibenarkan]

Cases referred to:
Allan v. Pratt [1888] 13 AC 780 ***(refd)***
Monohary Teresa v. Tan Ah Lek [1996] 1 CLJ 149; [1995] 3 MLJ 365 ***(foll)***

Legislation referred to:
Courts of Judicature Act 1964, s. 68(1)

For the respondent - Balachandran Mahesan; M/s. Bala Mahesan & Khairudin, Penang
For the appellant - Shanmugam (Venugopalan Nair with him); M/s. S. Hameed, Venu & Co., Butterworth

JUDGMENT

N.H. Chan JCA:

Counsel for the respondent in this appeal applies by notice of motion for the appeal to be dismissed on the ground that the appellant's appeal to the Court of Appeal is incompetent as the value of the subject-matter of the claim under appeal was less than RM250,000 and no leave to appeal to the Court of Appeal was obtained.

Section 68(l)(a) of the Courts of Judicature Act 1964 is as follows:

68(l) No appeal shall be brought to the Court of Appeal in any of the following cases:

(a) when the amount or value of the subject-matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal;

"The amount of the claim" has to mean the total amount or sum of the claim in the action which has been adjudged to be payable and, if it is not a money claim, it is "the value of the subject-matter of the claim" in the action which has been adjudged as recoverable because it is only against the judgment (and not against the claim made by claimants in their pleadings) that the appeal could be brought. See *Allan v. Pratt* [1888] 13 AC 780. The Earl of Selborne, giving the judgment of the Privy Council (consisting of the Earl of Selborne, Lord Watson, Lord Hobhouse and Sir Barnes Peacock), said this, at pp. 781, 782:

> Their Lordships are of opinion that the appeal is incompetent. **The proper measure of value for determining the question of the right of appeal is**, in their judgment, **the amount which has been recovered by the plaintiff in the action and against which the appeal could be brought**. Their Lordships, even if they were not bound by it, would agree in principle with the rule laid down in the judgment of this tribunal delivered by Lord Chelmsford in the case of *Macfarlane v. Leclaire* 15 Moore, PCC 181, that is, that the judgment is to be looked at as it affects the interests of the party who is prejudiced by it, and who seeks to relieve himself from it by appeal. If there is to be a limit of value at all, that seems evidently the right principle on which to measure it. **The person against whom the judgment is passed has either lost what he demanded as plaintiff or has been adjudged to pay something or to do something as defendant**. It may be that the value to the defendant of an adverse judgment is greater than the value laid by the plaintiff in his claim. If so, which was the case in *Macfarlane v. Leclaire*, it would be very unjust that he should be bound, not by the value to himself but by the value originally assigned to the subject-matter of the action by his opponent. The present is the converse case. A man makes a claim for much larger damages than he is likely to recover. The injury to the defendant, if he is wrongly adjudged to pay damages, is measured by the amount of damages which he is adjudged to pay. That is not in the least enhanced to him by the fact that some greater sum had been claimed on the other side. (emphasis supplied)
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> Therefore in principle their Lordships think the case is governed by *Macfarlane v. Leclaire,* upon the question of value, and they do not think it is at all affected by the circumstance that the Court below did not give effect to that objection, but gave leave to appeal. It has been decided in former cases that leave so given does not make the thing right, if it ought not to have been done.

The appellant (who was the defendant in the High Court) as "the person against whom the judgment is passed ... has been adjudged ... to do something as defendant", namely, he was ordered specifically to perform the sale and

purchase agreement dated 14 September 1989. An appeal against that judgment will be prohibited if the value of the subject-matter of the judgment for specific performance is below the value of RM250,000 (if leave to appeal to the Court of Appeal has not been obtained).

If "the amount of the claim" or "the value of the subject-matter of the claim" is to be based on the claim as pleaded in the statement of claim and not on the judgment, then the purpose of s. 68(l)(a) of the Act could be circumvented quite easily by claimants merely stating in their pleadings, in every case, that they are claiming for more than RM250,000. This easy way to get round the need to obtain leave makes the entire provision of s. 68(l)(a) of the Act superfluous. This is how it was put by Shankar JCA in *Monohary Teresa v. Tan Ah Lek* [1995] 3 MLJ 365, at 368:

> Such an approach ... could side-track the purpose of s. 68(l)(a) because claimants could get round the need to obtain leave merely by stipulating in their pleadings that they are claiming for more than RM250,000 in every case.

In the instant case the value of the contract (that is to say, the consideration for it) on which specific performance was sought and for which specific performance has been decreed is RM99,000 which was the purchase price.

The respondent by a contract in writing dated 14 September 1989 had bought the land described in the said contract from the appellant for the sum of RM99,000. On 7 April 1995, the High Court at Penang ordered specific performance of the contract against the appellant, which means that the appellant will have to transfer the land described in the said contract to the respondent. Thus, "the value of the subject-matter of the claim" in the action for specific performance which has been adjudged as recoverable by the said order for specific performance is the consideration (the purchase price) for the sale of the land by the appellant to the respondent.

Since the value of the subject matter of the order for specific performance is the price paid for the said land, namely, RM99,000, this appeal is therefore incompetent as no leave to appeal was obtained from the Court of Appeal.

We are therefore constrained to allow the motion to dismiss the appeal with costs.

Reported by W.A. Sharif